

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

Daniel Aaron Bress

2. **Position**: State the position for which you have been nominated.

United States Court of Appeals Judge for the Ninth Circuit

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office: Kirkland & Ellis LLP
 655 15th Street, N.W.
 Washington, D.C. 20005

Residence: Alexandria, Virginia

4. **Birthplace**: State year and place of birth.

1979; Hollister, California

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

2002 – 2005, University of Virginia School of Law; J.D. (*Order of the Coif*), 2005

1997 – 2001, Harvard College; A.B. (*magna cum laude*), 2001

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2008 – present
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.

Washington, D.C. 20005
Partner (2011 – present)
Associate (2008 – 2011)

Spring 2019; Fall 2016
The Columbus School of Law
3600 John McCormack Road, N.E.
Washington, D.C. 20064
Adjunct Professor of Law

Winter 2011; Winter 2010; Winter 2009
The University of Virginia School of Law
580 Massie Road
Charlottesville, Virginia 22903
Adjunct Professor of Law

2007 – 2008
Munger, Tolles & Olson LLP
560 Mission Street
San Francisco, California 94105
Associate

2006 – 2007
Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543
Law Clerk to Justice Antonin Scalia

2005 – 2006
United States Court of Appeals for the Fourth Circuit
255 West Main Street
Charlottesville, Virginia 22902
Law Clerk to Judge J. Harvie Wilkinson III

Summer 2004
Howard Rice Nemerovski Canady Falk & Rabkin, PC
(now part of Arnold & Porter Kaye Scholer LLP)
Three Embarcadero Center, 10th Floor
San Francisco, California 94111
Summer Associate

Summer 2003
Supreme Court of California
350 McAllister Street
San Francisco, California 94102
Judicial Extern to Justice Kathryn M. Werdegar

2001 – 2002
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Honors Paralegal, Bureau of Competition

Other Affiliations:

2019 – present
Daniel A. Bress, P.C.
655 Fifteenth Street, N.W.
Washington, D.C. 20005
President and Sole Shareholder

2002 – 2005
Member, Hasty Pudding Theatricals Graduate Board
12 Holyoke Street
Cambridge, Massachusetts 02138

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I did not serve in the military. I registered for the selective service upon turning 18.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Euromoney Legal Media Group – Americas Rising Star Award in Product Liability (2018)

DCA Live – Rising Star of Law (2018)

The National Law Journal – D.C. Rising Star (2017)

Law360 – Rising Star for Class Actions (2016)

Benchmark Litigation – D.C. Future Star (2017, 2018, 2019), Under 40 Hot List (2016)

The Legal 500 – Recognized for litigation work in areas of Trade Secrets and Product Liability Mass Tort and Class Action (2017), Trade Secrets (2016, 2018), Product Liability and Mass Tort Defense: Aerospace/Aviation (2012)

Kirkland & Ellis Pro Bono Service Award (2009; 2013 – 2018)

University of Virginia School of Law

Roger and Madeleine Traynor Award – presented at graduation to a student who has produced outstanding written work (2005)

Virginia Law Review, Editor-in-Chief (2004 – 2005)

Raven Society (all-University honor society at University of Virginia)

Harvard College

Bank of America Scholarship

Robert C. Byrd Honors Scholarship Program

California Scholarship Federation

Gilroy High School, Gilroy, California – Valedictorian (1997)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association (2017 – present)

Supreme Court Historical Society (2007 – present)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

California, 2008

District of Columbia, 2009

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2018

United States Court of Appeals for the Third Circuit, 2013

United States Court of Appeals for the Fourth Circuit, 2017

United States Court of Appeals for the Sixth Circuit, 2018

United States Court of Appeals for the Ninth Circuit, 2010

United States Court of Appeals for the Tenth Circuit, 2010

United States Court of Appeals for the Federal Circuit, 2011

United States District Court for the Northern District of California, 2014

United States District Court for the Eastern District of California, 2015
United States District Court for the Central District of California, 2015
United States District Court for the District of Colorado, 2009
United States District Court for the District of Columbia, 2009

My membership in the bar of the United States District Court for the District of Colorado lapsed in 2013 through nonuse. There have been no other lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Leadership Council on Legal Diversity (LCLD) Success in Law School Mentoring Program, Mentor (2012 – present)

Tzedek D.C., Advisory Council (2017 – present)

University of Virginia School of Law, Class of 2005 Class Committee (2005 – present)

Federalist Society for Law and Public Policy Studies (2003 – present)
Federalist Society Executive Committee for Criminal Law and Procedure Practice Group (2009 – 2010)

The John Marshall Foundation (2019 – present)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

With other attorneys at Kirkland & Ellis LLP, Kirkland Alert: *United Health Services, Inc. v. United States ex rel. Escobar*, June 20, 2016. Copy supplied.

A Clerk's Remembrance, UVA Lawyer Magazine, Spring 2016, at 41. Copy supplied.

A Former Clerk Pays Tribute to Justice Scalia, University of Virginia School of Law Website, Feb. 15, 2016. Copy supplied.

With Jeffrey Bleich, Michelle Friedland, Aimee Feinberg, and David Han, *Change of Heart—Justice Stevens Reassesses the Death Penalty*, S.F. Attorney Magazine, Fall 2008, at 32–35. Copy supplied. Reprinted in multiple outlets.

With Jeffrey Bleich, Michelle Friedland, Aimee Feinberg, and David Han, *Opinions of the Court By ... Anonymous*, S.F. Attorney Magazine, Summer 2008, at 38–42. Copy supplied.

With Jeffrey Bleich, Michelle Friedland, and Aimee Feinberg, *Dissenting from the Bench*, S.F. Attorney Magazine, Spring 2008, at 30–35. Copy supplied. Reprinted in multiple outlets.

Administrative Reconsideration, 91 Va. L. Rev. 1737 (2005). Copy supplied.

Inherent Administrative Reconsideration: Inherently Unfair?, 30 Admin. & Reg. L. News 7 (Spring 2005). Copy supplied.

With Jonathan Aspatore, *Mastering Direct Access Fundamentals: Understanding Market Information and Learning The Key Skills To Become A Successful Electronic Trader* (2001). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Letter to Sens. Grassley and Feinstein, Nomination of Beth A. Williams (with Kirkland & Ellis LLP colleagues), June 23, 2017. Copy supplied.

Letter to Sens. Alexander and Murray, Nomination of Kate O'Scannlain (with Kirkland & Ellis LLP colleagues), Nov. 10, 2017. Copy supplied.

Letter to Sens. Grassley and Feinstein, Nomination of Justice Britt C. Grant (with Kirkland & Ellis LLP colleagues), May 15, 2018. Copy supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

March 17, 2017: Speaker, Admitted Students Weekend, University of Virginia School of Law. I gave remarks at a social event for admitted students, faculty, and alumni about being a law student at the University of Virginia and clerking on the Supreme Court. I have no notes, transcript, or recording. The address of the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

May 21, 2016: Speaker, Sixth District Republican Convention, Roanoke, Virginia. I spoke in support of John Adams, a candidate for Attorney General of Virginia. I have no notes, transcript, or recording. The address of the Sixth District Republican Committee is P.O. Box 621, Daleville, Virginia 24083.

March 18, 2016: Speaker, Admitted Students Weekend, University of Virginia School of Law. I gave remarks at a social event for admitted students, faculty, and alumni about being a law student at the University of Virginia and clerking on the Supreme Court. I have no notes, transcript, or recording. The address of the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

April 8, 2015: Speaker, question and answer session, Supreme Court of the United States. I spoke to a group of junior high school students and parents visiting from Gilroy, California about working as a lawyer and clerking at the

Supreme Court. I have no notes, transcripts, or recording. The address of the Supreme Court is 1 First Street, N.E., Washington, D.C. 20543.

March 20, 2015: Speaker, Admitted Students Weekend, University of Virginia School of Law. I gave remarks at a social event for admitted students, faculty, and alumni about being a law student at the University of Virginia and clerking on the Supreme Court. I have no notes, transcript, or recording. The address of the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

April 10, 2014: Speaker, question and answer session, Supreme Court of the United States. I spoke to a group of junior high school students and parents visiting from Gilroy, California about working as a lawyer and clerking at the Supreme Court. I have no notes, transcripts, or recording. The address of the Supreme Court is 1 First Street, N.E., Washington, D.C. 20543.

April 4, 2013: Speaker, question and answer session, Supreme Court of the United States. I spoke to a group of junior high school students and parents visiting from Gilroy, California about working as a lawyer and clerking at the Supreme Court. I have no notes, transcripts, or recording. The address of the Supreme Court is 1 First Street, N.E., Washington, D.C. 20543.

March 22, 2013: Speaker, Admitted Students Weekend, University of Virginia School of Law. I gave remarks at a social event for admitted students, faculty, and alumni about being a law student at the University of Virginia and clerking on the Supreme Court. I have no notes, transcript, or recording. The address of the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

August 23, 2012: Speaker, luncheon event for *Virginia Law Review* members and faculty of the University of Virginia School of Law. Speech supplied.

April 4, 2012: Speaker, question and answer session, Supreme Court of the United States. I spoke to a group of junior high school students and parents visiting from Gilroy, California about working as a lawyer and clerking at the Supreme Court. I have no notes, transcripts, or recording. The address of the Supreme Court is 1 First Street, N.E., Washington, D.C. 20543.

March 23, 2012: Speaker, Admitted Students Weekend, University of Virginia School of Law. I gave remarks at a social event for admitted students, faculty, and alumni about being a law student at the University of Virginia and clerking on the Supreme Court. I have no notes, transcript, or recording. The address of the University of Virginia School of Law is 580 Massie Road, Charlottesville, Virginia 22903.

April 6, 2011: Speaker, question and answer session, Supreme Court of the

United States. I spoke to a group of junior high school students and parents visiting from Gilroy, California about working as a lawyer and clerking at the Supreme Court. I have no notes, transcripts, or recording. The address of the Supreme Court is 1 First Street, N.E., Washington, D.C. 20543.

April 6, 2010: Speaker, question and answer session, Supreme Court of the United States. I spoke to a group of junior high school students and parents visiting from Gilroy, California about working as a lawyer and clerking at the Supreme Court. I have no notes, transcripts, or recording. The address of the Supreme Court is 1 First Street, N.E., Washington, D.C. 20543.

July 1, 2008: Panelist, "U.S. Supreme Court Round-Up, Federalist Society," San Francisco Lawyers Chapter, San Francisco, California. I was on a panel that discussed decisions from the Supreme Court's October Term 2007. I have no notes, transcript, or recording. The address of the Federalist Society is 1776 I Street, N.W., Suite 300, Washington, D.C. 20006.

February 24, 2005: Speaker, *Virginia Law Review* Banquet for *Law Review* members, faculty, and guests, Charlottesville, Virginia. Copy supplied.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Lisa Helcm, *The 2017 D.C. 's Rising Stars*, Nat'l. L. J., Aug. 28, 2017. Copy supplied.

Matthew Cunningham, *Anaheim Elementary School District Agrees To Comply With Court Ruling On Palm Lane Charter School Conversion*, Anaheim Blog, July 27, 2017. Copy supplied.

Joseph Pimentel & Roxana Kopetman, *Appeals Court to Decide if Parents Can Trigger Reform of Anaheim's Palm Lane Elementary*, Orange County Register, Feb. 24, 2017. Copy supplied. Reprinted in multiple outlets.

Carolina Bolado, *Rising Star: Kirkland's Daniel Bress*, Law360, Mar. 31, 2016. Copy supplied.

Nelson Wins All-University Teaching Award, UVA Lawyer, Spring 2008. Copy supplied.

Denise Forster, *Bress '05 to Clerk for Justice Scalia*, University of Virginia School of Law Website. Copy supplied.

Thomas J. Castillo, *Harvard Student to Be a Contestant on "Greed,"* The

Harvard Crimson, May 19, 2000. Copy supplied.

Summer Theater Program Promotes Youth Esteem, Discipline, Gilroy Dispatch, July 9, 1997. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

- i. Of these, approximately what percent were:

jury trials:	_____%
bench trials:	_____% [total 100%]
civil proceedings:	_____%
criminal proceedings:	_____% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held judicial office.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have never been a candidate or held an elected public office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Speaker, Sixth District Republican Convention, Roanoke, Virginia (2016).

Lawyers for Romney, Washington, D.C. (2012).

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From 2005 to 2006, I served as a law clerk to the Honorable J. Harvie Wilkinson III, United States Court of Appeals for the Fourth Circuit.

From 2006 to 2007, I served as a law clerk to the Honorable Antonin Scalia, Associate Justice of the Supreme Court of the United States.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced law alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

2007 – 2008
Munger, Tolles & Olson LLP
560 Mission Street
San Francisco, California 94105
Associate

2008 – present
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
Associate (2008 – 2011)
Partner (2011 – present)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

Since 2007, and at both Munger Tolles & Olson LLP and later Kirkland & Ellis LLP, I have focused primarily on complex civil litigation at both the trial and appellate levels. I consider myself a "generalist" and have worked on a variety of litigation matters, including those involving class actions, commercial disputes, breach of contract, product liability, government fraud, trade secrets, and labor and employment. In addition to leading case development work at the trial court level, a substantial portion of my practice has been focused on brief-writing and devising legal strategy for large litigations and class actions. To that end, I regularly appear in federal and state courts across the country to argue various types of motions, such as motions to dismiss, motions for summary judgment, and other critical motions. I have additionally worked on various appellate matters in federal and state court.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

At Kirkland & Ellis LLP, my typical clients are corporations facing litigation in federal and state court. I also maintain a substantial pro bono practice, typically on behalf of individuals.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

As part of my private practice, I regularly appear in federal and state courts.

- i. Indicate the percentage of your practice in:

1. federal courts:	65 %
2. state courts of record:	35 %
3. other courts:	0 %
4. administrative agencies:	0 %

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	95 %
2. criminal proceedings:	5 %

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have not served as sole or chief counsel in any case tried to verdict or judgment. However, I have been involved in various capacities, including as a legal strategist, in cases that were presented to juries or that involved significant evidentiary proceedings, *see, e.g., Uribes v. 3M Co.*, No. 1-12-cv-220636 (Santa Clara Cnty., CA); *Sampson v. 3M Co.*, Case No. MID-L-5384-11AS (N.J. Super., Middlesex Cty.), matters in which jury trials were requested and which involved substantial trial court proceedings, but which were resolved favorably by motion or otherwise, *see, e.g., Sumer v. Carrier Corp.*, Case No. 14-cv-4271 (N.D. Cal.); *Grassi v. International Comfort Products, LLC*, Case No. 15-cv-253 (E.D. Cal.); *Amar Shakti Enterprises, LLC v. Wyndham Worldwide, Inc.*, Case No. 10-cv-1857 (M.D. Fla.); *DePree v. BASF Catalysts LLC*, No. RG12659674 (Alameda Cnty., CA), post-judgment proceedings following jury verdicts, *see, e.g., ECIMOS, LLC v. Carrier Corp.*, Case No. 15-cv-2726 (W.D. Tenn.), and long-running matters involving substantial trial court proceedings and in which trials have been requested, *see United States v. Honeywell Int'l Inc.*, Case No. 08-cv-961 (D.D.C.); *Williams v. BASF Catalysts LLC*, Case No. 11-cv-1754 (D.N.J.); *Oddo v. Arcoaire Air Conditioning & Heating*, Case No. 15-cv-1985 (C.D. Cal.); *DSM Dyneema LLC v. Thagard*, 13-cv-1686 (N.C. Sup. Ct., Business Ct.).

i. What percentage of these trials were:

- | | |
|--------------|------|
| 1. jury: | 100% |
| 2. non-jury: | 0% |

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have filed briefs seeking or opposing certiorari at the Supreme Court on behalf of corporate, government, and pro bono clients in the following cases. Copies of all such briefs are supplied.

Kuenzel v. Alabama, 137 S. Ct. 375 (No. 16-213)

Territory of Guam v. Paeste, 136 S. Ct. 2508 (No. 15-990) (papers were also filed seeking an emergency stay of the mandate, No. 15A663)

Woodel v. Florida, 135 S. Ct. 1735 (No. 14-906)

Jaffé v. Samsung Electronics Co., 137 S. Ct. 429 (No. 13-1324)

Teva Pharmaceuticals USA, Inc. v. Romo, 134 S. Ct. 2872 (No. 13-1015)

Michigan v. Harrison, 134 S. Ct. 1023 (No. 13-451)

McLane Southern, Inc. v. Bridges, 134 S. Ct. 1033 (No. 13-657)

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe

in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
 - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
 - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
- (1) *Williams v. BASF Catalysts LLC*, 765 F.3d 306 (3d Cir. 2014); *Williams v. BASF Catalysts LLC*, 2012 WL 6204182 (D.N.J. Dec. 12, 2012); *Williams v. BASF Catalysts LLC*, 2016 WL 1367375 (D.N.J. Apr. 5, 2016); *Williams v. BASF Catalysts LLC*, 2017 WL 3317295 (D.N.J. Aug. 3, 2017); *DePree v. BASF Catalysts LLC*, 2016 WL 1039497 (Cal. Ct. App. Mar. 15, 2016); *Sampson v. 3M Co.*, Case No. 080316 (N.J. S. Ct.), Case No. AM-000730-16T2 (N.J. App. Div.) & MID-L-5384-11AS (N.J. Super., Middlesex Cty.); *Uribes v. BASF Catalysts LLC*, Case No. 112CV220636 (Cal. Super., Santa Clara Cty.) & Case No. H043017 (Cal. Ct. App. 6th App. Dist.); *Manuel v. BASF Catalysts LLC*, Case No. BC 479452 (Cal. Super., Los Angeles Cty.); *Heisch v. Allied Packing & Supply, Inc.*, Case No. RG-12-622472 (Cal. Super., Alameda Cty.); *Unterleitner v. BASF Catalysts LLC*, Case No. RG15778755 (Cal. Super., Alameda Cty.); and numerous other related cases.

Since 2009 and through the present, I have represented BASF in numerous cases alleging fraud and spoliation in decades of past asbestos lawsuits. The plaintiffs in these cases contend that Engelhard Corporation, a company BASF acquired, and Engelhard's former outside counsel at Cahill Gordon & Reindel LLP, misled plaintiffs about whether a talc product contained asbestos, and engaged in related document destruction. These allegations have been advanced most prominently in a federal putative class action denominated *Williams v. BASF Catalysts LLC*, filed on behalf of past asbestos plaintiffs who previously sued Engelhard. That matter is currently pending before the United States District Court for the District of New Jersey (now before Judge Esther Salas, Magistrate Judge Joseph A. Dickson, and Special Master and retired New Jersey Supreme Court Justice Roberto A. Rivera-Soto). The *Williams* case also went to the Third Circuit before a panel composed of Chief Judge McKee, Judge Ambro, and Judge Fuentes. The case has also generated substantial additional litigation in states across the country, most prominently California and New Jersey. Substantial under-seal proceedings have also taken place in New Jersey state court concerning plaintiff's motion for BASF's privileged documents under the crime-fraud exception to the attorney-client privilege (the *Sampson* case). Some of these various matters are ongoing and others have concluded.

The following are the primary counsel involved in this matter:

Co-Counsel for BASF:

Eugene F. Assaf
Michael F. Williams
Peter A. Farrell
Ronald Anguas
Tia T. Trout-Perez
Elizabeth Dalmut
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
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Houston, Texas 77002
(713) 836-3600

Professor Lawrence C. Marshall
Stanford Law School
Crown Quadrangle
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Stanford, California 94305
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- (2) *United States v. Honeywell International Inc.*, Case No. 08-cv-961 (D.D.C.).

This is a False Claims Act lawsuit brought by the United States Department of Justice against Honeywell. I have represented Honeywell in this matter since 2008. The case concerns a Honeywell anti-ballistic product known as "Z Shield," which was used in bullet-resistant vests worn by federal, state, and local law enforcement officers. The United States contends that Z Shield unacceptably degraded under conditions of high heat and humidity and thereby put law enforcement officers at risk of death or serious injury. The case is pending in the United States District Court for the District of Columbia. It was originally assigned to Chief Judge Richard W. Roberts and Magistrate Judge John M. Facciola. It is now assigned to Judge Paul L. Friedman and Magistrate Judge Deborah A. Robinson. The case is ongoing.

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- (3) *Sumer v. Carrier Corp.*, Case No. 14-cv-4271 (N.D. Cal.) (Chabria, J.); *Grassi v. International Comfort Products, LLC*, Case No. 15-cv-253 (E.D. Cal.) (Mendez, J.); *Williams v. United Technologies Corp.*, Case No. 15-cv-4144 (W.D. Mo.) (Laughrey, J.); *Oddo v. Arcoaire Air Conditioning & Heating*, Case No. 15-cv-1985 (C.D. Cal.) (Snyder, J.); *Koski v. Carrier Corp.*, Case No. 16-cv-25372 (M.D. Fla.) (Scola, J.); *Cormier v. Carrier Corp.*, Case No. 18-cv-7030 (C.D. Cal.) (Snyder, J.).

Since 2014 and through the present, I have represented United Technologies Corporation and its subsidiary, Carrier Corporation, in various putative federal class actions, mostly in federal court in California, alleging defects in home air conditioning units. These product liability cases have involved varying but related allegations of product malfunction, and typically involve claims for breach of warranty, unfair trade practice, and fraud. Most of the cases have been dismissed or partially dismissed, with courts agreeing, among other things, that Carrier had met and exceeded its warranty obligations. The *Oddo* and *Cormier* matters have been the subject of extensive class certification proceedings that are ongoing.

The following are the primary counsel involved in this matter:

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- (4) *DSM Dyneema LLC v. Thagard*, 13-cv-1686 (N.C. Sup. Ct., Business Ct.)

Since 2013, I have represented Honeywell in a complex trade secrets case pending in the North Carolina Business Court in Charlotte, North Carolina. Plaintiff DSM Dyneema LLC alleges that Dr. James Thagard, a former DSM employee who later joined Honeywell, misappropriated DSM's trade secrets relating to ballistic material used in military combat helmets. DSM further alleges that Dr. Thagard shared this proprietary information with Honeywell, allowing Honeywell to beat out DSM for a supply role in a next-generation military helmet program. The case remains pending before the Honorable Louis Bledsoe III, and has also involved ancillary proceedings in California and New York.

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- (5) *Ochoa v. Anaheim City School Dist.*, 11 Cal. App. 5th 209 (2017).

From 2015 to 2017, I represented pro bono a group of parents of students at Palm Lane Elementary School in Anaheim, California, who sought to convert their children's failing public school into a charter school using California's Parent Empowerment Act. That Act, among other things, allows parents to petition for various forms of change when their children's public school fails to meet certain requirements for school performance. On appeal in the Fourth District Court of Appeal, the Court (Judges O'Leary, Fybel, and Aronson) agreed with the parents that the school district's rejection of the parents' petition to convert Palm Lane into a charter school was arbitrary and capricious and contrary to law.

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- (6) *Huntsman International LLC v. Albemarle Corp.*, Case No. 650672/2017 (N.Y. Sup. Ct. Commercial Div., App. Div. 1st Dep't).

I represent Huntsman in this commercial fraud dispute concerning the \$1 billion sale of a pigments business. In 2013, Huntsman agreed to purchase the pigments business of Rockwood International Inc. Huntsman's lawsuit alleges that Rockwood in the course of the transaction engaged in fraud and breach of contract by failing to disclose problems with a particular pigments reactor technology. After substantial proceedings in the New York Commercial Division and New York Appellate Division, the matter will be proceeding in arbitration.

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- (7) *Kuenzel v. Alabama*, 137 S. Ct. 375 (No. 16-213).

In 2016, I represented William Earnest Kuenzel, a death row inmate in Alabama, in his petition for writ of certiorari in the U.S. Supreme Court. The primary issue presented to the Supreme Court for its review was whether an Alabama procedural rule on successive habeas petitions violated due process because it required petitioners to bring a successive state habeas petition during a time period when another Alabama rule would have required that petition be dismissed, due to the pendency of separate federal habeas proceedings. The petition was ultimately denied in 2016.

The following are the primary counsel involved in this matter:

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- (8) *Corber v. Xanodyne Pharmaceuticals, Inc.*, 771 F.3d 1218 (9th Cir. 2014) (*en banc*).

This 2014 Ninth Circuit *en banc* appeal presented the question whether, under the federal Class Action Fairness Act (CAFA), a California state court petition to coordinate the personal-injury claims of more than 100 plaintiffs in various state court cases meant that these cases could then all be removed to federal court. CAFA allows removal when “monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs’ claims involve common laws of law or fact.” 28 U.S.C. § 1332(d)(11)(B)(i). I was involved in representing Teva Pharmaceuticals. The Ninth Circuit, sitting *en banc*, and in a 9-2 decision by Judge Gould, agreed that the action was removable because plaintiffs’ petition to coordinate their state court cases “for all purposes” amounted to a request for these cases to be “tried jointly” within the meaning of CAFA. Judges Kozinski, Silverman, Graber, Tallman, Clifton, Murguia, Christen, and Hurwitz joined Judge Gould’s opinion for the majority. Judge Rawlinson dissented, joined by Judge Berzon.

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- (9) *Jaffé v. Samsung Electronics Co.*, 737 F.3d 14 (4th Cir. 2013); *Jaffé v. Samsung Electronics Co.*, 137 S. Ct. 429 (No. 13-1324).

From 2012 to 2014, I was involved in representing Samsung in the United States Court of Appeals for the Fourth Circuit and the Supreme Court in a case arising from German insolvency proceedings involving Qimonda, a semiconductor company. The German bankruptcy administrator sought U.S. bankruptcy protection under Chapter 15 and the right to control the disposition of Qimonda's U.S. assets, consisting of approximately 4,000 patents. But the bankruptcy administrator also purported to cancel cross-licenses to those patents. The primary legal question presented was whether a U.S. bankruptcy court had the power to condition a grant of authority to the bankruptcy administrator under Chapter 15 on the administrator's compliance with 11 U.S.C. § 365(n), thereby preventing cancellation of the cross-licenses. The Fourth Circuit in an opinion by Judge Niemeyer (joined by Judges Wynn and Floyd) agreed with Samsung that the bankruptcy court had acted lawfully in precluding cancellation of the cross-licenses. The bankruptcy administrator sought certiorari in the Supreme Court, which was denied.

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- (10) *Amar Shakti Enterprises, LLC v. Wyndham Worldwide, Inc.*, Case No. 10-cv-1857 (M.D. Fla.).

From 2010 to 2012, I represented Wyndham in a putative nationwide class action in the Middle District of Florida brought by Wyndham franchisees, challenging the lawfulness of Wyndham Rewards, a rewards program similar to “frequent flier” programs. The plaintiffs sought certification of a class that would encompass Wyndham’s 6,000 franchisees operating hotels in the United States. They argued that the fee Wyndham charged its franchisees for operating Wyndham Rewards, as well as certain of the policies by which Wyndham Rewards was administered, amounted to unfair trade practices and breaches of their franchise agreements. The plaintiffs estimated their alleged damages at approximately \$300 million, not including punitive damages. The case was assigned to Judge Gregory A. Presnell and Magistrate Judge Karla R. Spaulding. The Court agreed with Wyndham that many of plaintiffs’ claims were barred by their franchise agreements. After extensive discovery into class certification, the plaintiffs abandoned their certification efforts and the case was favorably resolved.

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18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Most of my legal work involves litigation in federal and state court, but I also provide legal advice to clients concerning matters that are not in litigation, such as pre-dispute counseling, mediation, analysis of contractual obligations, and internal investigations. Through my law firm and other organizations, I also devote a substantial portion of time to serving as a moot court judge for cases being argued at the Supreme Court and in lower courts.

I have never acted or registered as a lobbyist.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a

syllabus of each course, provide four (4) copies to the committee.

In January 2009, 2010, and 2011, I taught a seminar at the University of Virginia School of Law entitled "Textualism and its Critics." I co-taught this course with Professor Micah Schwartzman, a faculty member. The course examined "textualism" as a method of statutory interpretation, with a focus on analytical methods of interpreting written law, the goals of statutory interpretation, and the value of various legal sources in determining the meaning of enacted law. Readings included articles by Justice Antonin Scalia, Justice Stephen Breyer, Judge Richard Posner, and various academic articles and cases. Copies of the syllabus from each year have been supplied.

In 2016, I co-taught this same seminar with Bryan Killian, a practicing lawyer at Morgan Lewis, at the Columbus School of Law in Washington, D.C. Although the class had been renamed "Justice Scalia's Textualism," it was in substance the same as "Textualism and its Critics." Copies of the syllabus supplied. I am teaching this course again at the Columbus School of Law in Spring 2019. Copies of the syllabus supplied.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I expect to receive compensation upon my departure from the partnership of Kirkland & Ellis LLP. I am also a participant in a deferred allocation plan through Kirkland & Ellis LLP under which I would receive disbursements for ten years, beginning four years after my departure from the firm. I am additionally a participant in the Kirkland & Ellis LLP 2011 Retirement Plan. The amounts for these different plans are set forth in the attached Net Worth Statement and Financial Disclosure Report.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in

detail (add schedules as called for).

See attached Net Worth Statement.

24. Potential Conflicts of Interest:

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed, I would recuse myself from any matter where I have ever played a role. For an appropriate period of time, I would also recuse myself from any cases where my current law firm, Kirkland & Ellis LLP, represents any party. I will evaluate any other real or potential conflict of interest, or relationship that could give rise to the appearance of a conflict of interest, on a case-by-case basis and determine appropriate action, including recusal, with the input of parties and consultation of applicable canons of judicial ethics.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I will carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances.

25. Pro Bono Work: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I am strongly committed to *pro bono* work, which has been an important part of my practice. I have dedicated substantial time to providing *pro bono* legal services, including over 200 *pro bono* hours in 2016, over 100 hours in 2017, and over 60 hours in 2018. My *pro bono* work includes the following matters:

(1) *Ochoa v. Anaheim City School Dist.*, 11 Cal. App. 5th 209 (2017): I represented a group of parents of students at Palm Lane Elementary School in Anaheim, California, who sought to convert their children's failing public school into a charter school using California's Parent Empowerment Act. On appeal in the Fourth District Court of Appeal, the Court agreed with the parents that the school district's rejection of the parents' petition to convert Palm Lane into a charter school was arbitrary and capricious and contrary to law.

(2) *Crawford v. Pearson*, Case No. 1:13-cv-773 (E.D. Va.), Case No. 17-7211 (4th Cir.): I represent Mr. Brandon Crawford in his petition for federal habeas relief in the United States District Court for the Eastern District of Virginia and the United States Court of Appeals for the Fourth Circuit. Mr. Crawford was sentenced to life in prison without parole for a murder he committed when he was a juvenile, and contends that this sentence violates the Eighth Amendment.

(3) *Kuenzel v. Alabama*, 137 S. Ct. 375 (No. 16-213): I represented William Earnest Kuenzel, a death row inmate in Alabama, in his petition for writ of certiorari in the Supreme Court. The primary issue presented to the Supreme Court for its review was whether an Alabama procedural rule on successive habeas petitions violated due process because it required petitioners to bring a successive state habeas petition during a time period when another Alabama rule would have required that petition be dismissed, due to the pendency of separate federal habeas proceedings.

(4) *Woodel v. Florida*, 135 S. Ct. 1735 (No. 14-906): I represented Mr. Thomas D. Woodel, a death row inmate in Florida, in his petition for writ of certiorari in the Supreme Court. The petition concerned trial counsel's claimed ineffective assistance of counsel.

(5) *Michigan v. Harrison*, 134 S. Ct. 1023 (No. 13-451): I represented Mr. Harrison at the certiorari stage in the Supreme Court. The case concerned whether Mr. Harrison's suit under 42 U.S.C. § 1983 for his alleged unlawful incarceration was timely filed.

(6) *Territory of Guam v. Paeste*, 136 S. Ct. 2508 (No. 15-990): I represented the territory of Guam in filing a petition for writ of certiorari in the Supreme Court. Residents of Guam had filed suit under 42 U.S.C. § 1983 against Guam and Guam officials contending that Guam had unlawfully withheld tax refunds. The question presented was whether § 1983 applies to the allegedly unlawful actions of territorial officers acting in their official capacities.

(7) I serve on the Advisory Council for Tzedek D.C., a *pro bono* organization dedicated to assisting persons of limited means in obtaining debt relief. Among other things, I have provided legal advice relating to limiting the penalties (such as loss of a driver's license) for unpaid parking tickets and driving infractions.

In addition to the foregoing, I have assisted in *pro bono* matters by participating in numerous moot courts, both at Kirkland & Ellis LLP and through other organizations. These cases have involved criminal, habeas, civil rights, immigration, and other matters. I have also supervised junior lawyers at Kirkland & Ellis LLP in other *pro bono* matters.

26. Selection Process:

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your

jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On May 24, 2017, I was contacted by the White House Counsel's Office to inquire whether I would be interested in interviewing for a seat on the Ninth Circuit. On June 13, 2017, I interviewed with attorneys from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice in Washington, D.C. In October 2017, I was invited to interview with a judicial commission established by Senator Feinstein. That interview took place on November 30, 2017. In February 2018, I was invited to interview with a judicial commission established by Senator Harris. That interview took place on March 14, 2018. On January 14, 2019, I interviewed with attorneys from the White House Counsel's Office. On January 30, 2019, I was informed that the President intended to nominate me to fill a vacancy on the Ninth Circuit. Since then, I have been in contact with officials from the White House Counsel's Office and the Justice Department's Office of Legal Policy regarding the nomination.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.